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CONTENTS

Legislation	25	Federal Cases	38
Hoover Commission	26	State Developments	38
Supreme Court Cases	28	Legal Literature	41
Procedure Act Cases	33	Committee Chairmen	44
Hearing Examiners	35	New Section Members	46

FEDERAL LEGISLATION

The report of the Section's National Committee, submitted at the St. Louis meeting of the Section, lists the following significant items of administrative law legislation pending in Congress.

Administrative Court. S. 684, to improve the administration of justice by the creation of an Administrative Court of the United States, was introduced by Senator McCarran on January 27 and is pending before the Senate Judiciary Committee. It was the subject of a previous Bulletin of the Administrative Law Section.

Administrative Procedure Act Amendments. S. 14 — to improve the administration of justice and reduce expenditures by eliminating overlapping functions of Federal agencies, preserving State and local jurisdiction, utilizing existing judicial remedies, and forbidding unnecessary proceedings — was introduced by Senator McCarran on January 5 and referred to the Senate Judiciary Committee. It takes the form of an amendment to Section 9 of the Administrative Procedure Act.

S. 1982, making the Administrative Procedure Act applicable to certain hearings in the Post Office Department, was introduced on June 2 by Senator Magnuson and referred to the Senate Judiciary Committee. It would make Sections 5, 7, and 8 of the Administrative Procedure Act applicable to postal fraud order proceedings.

H. R. 10, to facilitate the deportation of aliens from the United States etc., was introduced by Congressman Hobbs on January 3. Hearings were held by the House Judiciary Committee in May, and the bill was reported out on August 4. It would render Sections 5, 7, 8, and 10 of the Administrative Procedure Act inapplicable to "any law relating to the immigration, exclusion, expulsion, or registration of aliens or to the nationality or naturalization laws of the United States."

S. 1973, to amend the Communications Act of 1934, was passed by the Senate on August 9 and is now pending before the House Committee on Interstate and Foreign Commerce. Its purpose, as stated by the Senate Committee on Foreign and Interstate Commerce, is to clarify the Communications Act, to improve the organization and procedures of the Commission generally, and "to make clear and definite administrative actions and appellate procedures in accordance with the Administrative Procedure Act."

Tax Court. H. R. 3113, incorporating into the federal judicial system the Tax Court, was reported favorably by the House

Judiciary Committee on July 28. It is favored by the Tax Section of the American Bar Association, opposed by accountant practitioners.

Delegation of Presidential authority. H. R. 5526, to authorize the President to provide for the performance of certain of his functions by other officers of the Government, passed the House on August 12 and is now before the Senate Committee on Expenditures in the Executive Departments.

Judicial review. There are currently pending two bills providing for review of actions of some agencies (1) by Courts of Appeals instead of special three-judge courts and (2) for review of their judgments by the Supreme Court upon certiorari rather than by direct appeal. H. R. 5487 thus would modify present provisions for review of certain types of orders of the Federal Communications Commission, of the Secretary of Agriculture under the Packers and Stockyards Act and the Perishable Agricultural Commodities Act, and of the Maritime Commission under the Shipping Act and the Intercoastal Shipping Act. H. R. 5488 would similarly revise provisions for review of certain orders of the Interstate Commerce Commission. Both bills are now pending before the House Judiciary Committee, a subcommittee of which approved them on August 8.

O'Hara Bill. H. R. 1819 provides for the transfer of authority to adjudicate unfair competition cases from the Federal Trade Commission to the federal district courts. It is currently pending before the House Committee on Interstate and Foreign Commerce.

Practitioners. H. R. 4446 (originally introduced as H. R. 1566), to protect the public with respect to practitioners before administrative agencies, was reported from the House Judiciary Committee on June 24 by Subcommittee Chairman Francis Walter, who had introduced the measure. This bill was the subject of a previous Bulletin of the Section. Its companion measure in the Senate is S. 1928, now pending before the Senate Judiciary Committee.

Reorganization of executive agencies. The Reorganization Act of 1949 (Public Law No. 109, 81st Congress, June 20, 1949) authorizes the President to transmit to Congress plans for the reorganization of executive agencies. Such plans become effective upon the expiration of 60 calendar days of continuous session of Congress unless during that period either House passes a resolution of disapproval. No plans may abolish or consolidate executive departments or transfer all their functions, or authorize the exercise of any function not otherwise authorized by law. All plans must be transmitted to Congress before April 1, 1953.

Uniform rules. S. 527, to provide general rules of practice and procedure before federal agencies, was introduced by Senator McCarran on January 17 and referred to the Senate Judiciary Committee. It was the subject of a previous Bulletin of the Administrative Law Section.

HOOVER COMMISSION REPORTS

Like the President's Committee on Administrative Management, which reported in 1937, the Hoover Commission on Organization of the Executive Branch of the Government was concerned primarily with the essentials of effective organization of the ex-

ecutive branch. "Without these essentials, all other steps to improve organization and management are doomed to failure." Though the Commission's Reports are thus written mainly from the viewpoint of the administrator rather than the lawyer, this does not mean that they are not of importance to the legal profession, especially those practitioners who are concerned with administrative law, since public administration and administrative law are not only two aspects of a related whole but often become inseparable. Certain portions of the Hoover Commission Reports bear directly upon some administrative law problems.

Agency Personnel

In the first place, there is the matter of securing competent personnel, which the Attorney General's Committee on Administrative Procedure in 1941 characterized as the "heart" of administrative adjudication. The problem of personnel is not limited to those at the hearing examiner level. It exists at all grades of the administrative hierarchy and may, indeed, often be most acute at the lower levels where official views first take shape in most cases. The matter of Personnel Management is dealt with in a Report of the Hoover Commission submitted to the Congress on February 9, 1949. "The Government too often fails to get the right man for the job or the right job for the man." In order to build an adequate career service, the Commission urges that the primary responsibility for recruiting and examining federal employees be placed on the several departments and agencies, with the Civil Service Commission relegated to such functions as setting standards, post-auditing personnel programs, and the like.

"Independent" Agencies

Most of the Commission's Reports are concerned with problems of organization and administration in particular departments and agencies. The Report on the Independent Regulatory Commissions is of special interest in administrative law. Nine agencies come within the area of this Report — Interstate Commerce Commission, Federal Reserve Board, Federal Trade Commission, Federal Power Commission, Securities and Exchange Commission, Federal Communications Commission, National Labor Relations Board, U. S. Maritime Commission, and Civil Aeronautics Board. With respect to such "independent" regulatory agencies, the Commission urges that all administrative responsibility be vested in the chairman in order to eliminate the inefficiency inherent in administration by a plural executive. The Commission also recommends that members of SEC, FPC, and FCC be removable only for cause as is the case with the other commissions. See the *Humphrey* case, 295 U. S. 602. It is also recommended that a commissioner or board member, upon the expiration of his term, continue to hold office until his successor has been appointed and qualified. Other recommendations are that the salaries, including those of agency staffs, be raised and that statutes be amended to permit delegation of routine, preliminary, and less important work to staff members under supervision. The latter was also a point previously made by the Attorney General's Committee on Administrative Procedure.

Continuous Study

The Hoover Commission expressly disavows exploration of the problems of administrative procedure, but it is concerned

with the growth of unnecessarily cumbersome and costly administrative procedures. The Commission recommends that the Administrative Management Division of the Office of the Budget, with the aid of carefully selected legal consultants, should suggest ways and means to improve and reduce the cost of disposing of business before administrative agencies. Such studies would be concerned not only with the independent regulatory agencies but also with the administrative disposition of controversies before all Government agencies. Here again the Hoover Commission, in emphasizing the need for expedition in administrative procedures, is but reiterating what was said by the Attorney General's Committee on that point.

SUPREME COURT

In effect the Supreme Court of the United States has long been the administrative court of the United States. That is so because federal legislation increasingly utilizes administrative interpretation, declaration, and application of federal regulatory policies in one way or another. The Supreme Court, in its position as supervisor of the federal judicial system as an operating concern, thus finds itself constantly called upon to review administrative law cases. It has demonstrated its concern that the federal administrative establishment be free to operate within statutory and constitutional limits without judicial interference. Through the flexible certiorari system it selects causes for review which seem to involve either challenge of due administrative autonomy, on the one hand, or administrative departures from law on the other hand. The paragraphs which follow contain brief analyses and comments upon important decisions by the Court during the 1948 Term and the first months of the 1949 Term.

Right to oral hearing. In *Federal Communications Commission* v. *WJR,* 337 U. S. 265, 69 S. Ct. 1097, the Court dealt with the extent to which due process of law requires federal administrative tribunals to accord oral argument, particularly on questions of law. The Commission had granted an application for a permit to construct a radio broadcasting station on the frequency which previously had been used exclusively by respondent WJR, which had filed a petition for reconsideration on the ground that the new station would cause objectionable interference. This petition was denied in a written opinion without prior oral argument. WJR then appealed to the Court of Appeals for the District of Columbia, which held that the Fifth Amendment assured to WJR the right of oral argument before the Commission. 174 F. 2d 226. But the Court of Appeals was reversed by a unanimous Supreme Court, which took special issue with the assertion of the lower court that an opportunity for oral argument was an inherent element of procedural due process in all judicial or quasi-judicial determinations of questions of law outside of such questions as may arise upon interlocutory matters involving stays pendente lite, temporary injunctions, and the like. "The right of oral argument as a matter of procedural due process varies from case to case in accordance with differing circumstances", said the Court through the late Justice Rutledge. It held that Congress had committed to the Commission's discretion such questions as whether and under what circumstances it would allow or require oral argu-

ment. The ruling that the Constitution does not require oral argument in all cases where even substantial questions of law are raised is undoubtedly of great significance. It may open the way to a breakdown of what many have heretofore thought to be one of the fundamental safeguards in the administrative decision process, since oral argument is perhaps the last deterrent to written post-hearing procedures in which busy agency heads must inevitably — and despite the best of intentions — leave reading and analysis to subordinates with no chance for the outside party to be heard by him who purports to decide without having heard *either* evidence or argument. Moreover, the right to insist on an oral hearing — the ability to confront the decider face to face — is an important element in building up public confidence in administrative justice. As stated by a learned English judge in language which is applicable as well to this side of the Atlantic: "In my judgment, it would as a matter of public policy be very inexpedient for a department of the Government in whom powers such as these are vested to refuse an appellant an oral hearing if he requests it. It is not expedient that a party should be sent away with a grievance. It is desirable that the decision of a Government department equally with that of a Court of justice should be arrived at and pronounced in full publicity and in such manner as to satisfy the public conscience that the case has been heard and a decision pronounced after full opportunity given to the party to make and sustain his case." *Rex* v. *Local Government Board,* [1914] 1 K. B. 160, 190.

Right of cross-examination. In *Reilly* v. *Pinkus,* 70 S. Ct. 110 (1949), the Court held that a fraud order of the Postmaster General would not be enforced because of undue restriction of the respondent's right of cross-examination at the administrative hearing. The expert evidence of physicians, upon which the order was based, rested in part upon knowledge acquired from medical text books and publications on which these experts placed reliance. In cross-examination respondent sought to question these witnesses concerning statements in other medical books, some of which at least were shown to be respectable authorities. The questions were not permitted. "It certainly is illogical," asserted Justice Black, "if not actually unfair, to permit witnesses to give expert opinions based on book knowledge, and then deprive the party challenging such evidence of all opportunity to interrogate them about divergent opinions expressed in other reputable books."

Bias. In *National Labor Relations Board* v. *Pittsburgh S. S. Co.,* 337 U. S. 656, 69 S. Ct. 1283, the Court of Appeals for the Sixth Circuit had refused enforcement of a Board order on the ground of bias of the trial examiner. According to that court, whenever there was a conflict of evidence, the witnesses for the company were held to be untrustworthy and those for the union reliable and this, said the court, indicated bias on the examiner's part. The Supreme Court rejected the lower court's conclusion that an objective finder of fact could not resolve all factual conflicts arising in a legal proceeding in favor of one litigant. "Total rejection of an opposed view," said Justice Rutledge for the Court, "cannot of itself impugn the integrity or competence of a trier of fact." However, the Court went on to state expressly that "careful scrutiny of the record belies the view that the trial examiner did in fact believe all union testi-

mony or that he even believed the union version of every disputed factual issue."

Primary jurisdiction. In *Securities & Exchange Commission* v. *Otis & Co.*, 70 S. Ct. 89. (1949), Otis sought to enjoin the SEC from proceeding with a proposed hearing to determine whether to revoke or suspend the broker-dealer registration of Otis for fraudulent conduct. The complaint alleged that the very issue which the Commission sought to determine had already been determined in favor of Otis by a court of competent jurisdiction, and that the SEC did not have and could not produce any new evidence in the pending proceeding. The Court of Appeals for the District of Columbia, in a lengthy opinion, held that the complaint was not subject to a motion to dismiss. 176 F. 2d 34. The Supreme Court reversed in a memorandum decision, citing *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U. S. 41, and other cases.

Rate making. Two cases deal with significant aspects of the rate-making function. In *Ayrshire Collieries Corp.* v. *United States*, 335 U. S. 573, 69 S. Ct. 278, the Court on appeal sustained a three-judge district court which had refused to disturb an order of the ICC in two bituminous coal proceedings involving group rates. The Commission had found certain existing rates unlawful, disapproved a dual basis of rates, specified rates which it approved, and ruled that proposed rates would be unreasonable to the extent that they exceeded the thus approved rates. The Court upheld the Commission's findings of undue preference and prejudice. Great emphasis was placed upon the *expertise* of the agency. "We would depart from our competence and our limited function in this field," stated Justice Douglas, "if we undertook to accommodate the factors of transportation conditions, distance and competition differently than the Commission has done in this case. That is a task peculiarly for it."

In *T. W. A.* v. *Civil Aeronautics Board*, 336 U. S. 601, 69 S. Ct. 756, the Court on certiorari held that the Board did not have authority to fix a new mail rate for air carriers and also make it retroactive for a period in which a final rate previously fixed by the Board was in effect and unchallenged by the initiation of a mail rate proceeding. Compare *Arizona Grocery* v. *Atchison Ry.*, 284 U. S. 370, which reaches a similar result. But here the retroactive rate increase would benefit the airline albeit at the expense of the United States, and the issue was whether its losses should be thus ignored on plea of want of power even though the Board as a matter of practice reaches the same result by considering past losses in fixing rates for the future. "Petitioner's reading of the Act would in practical effect have the tendency to transform it into a cost-plus system of regulation," said the Court through Justice Douglas. "It is too unprecedented a departure from the conventions of rate-making to rest on mere inference." Justices Jackson and Frankfurter dissented, the former calling attention to prior inconsistent positions taken by the Board.

Availability of review. *United States* v. *Interstate Commerce Commission*, 337 U. S. 426, 69 S. Ct. 1410, involved an action by the United States as a shipper to set aside a Commission order which denied the Government a recovery in damages for exaction of an allegedly unlawful railroad rate. The Commission was made a defendant, as was

the United States in view of the statutory requirement that any action to set aside a Commission order shall be brought "against the United States" — thus achieving an action which should be entitled "*United States* v. *United States*"! Without reaching the merits of the case, the district court dismissed on the theory that the Government could not maintain a suit against itself. The Supreme Court held the dismissal error. "The established principle that a person cannot create a justiciable controversy against himself has no application here", stated Justice Black. Though in form a suit by the Government against itself, the basic question involved was whether the railroads had illegally exacted sums of money from the United States. The real controversy was thus between the Government and the railroads and the suit was necessary to settle it. But the Court still had to deal with the contention that section 9 of the Interstate Commerce Act barred any shipper, including the Government, from judicial review of an order denying damages in reparation proceedings initiated before the Commission. Under section 9, it was argued, a shipper could elect to bring his action before the Commission or before the courts. If he elected to proceed before the Commission, he was said to be barred from seeking any judicial review of the Commission order. Under this argument, the order was final and not reviewable by any court even though entered arbitrarily and in defiance of law. "Such a sweeping contention for administrative finality," Justice Black states, "is out of harmony with the general legislative pattern of administrative and judicial relationships." In support he cites section 10(a) of the Administrative Procedure Act, which provides for review of both "legal wrongs" and statutory grievances, as well as *Shields* v. *Utah* (305 U. S. 177, 181-185) and *Stark* v. *Wickard* (321 U. S. 288, 307-310). The instant case thus substantially changes — and harmonizes — pre-existing law as shown by the cases cited in the dissenting opinion of Justice Frankfurter.

Methods of review. A case involving intricate legal tangles inherent in the present system of diverse methods of judicial review is *United States* v. *Jones*, 336 U. S. 641, which involved rates for the compensation of a railroad for compulsory mail service. Proceedings for readjustment began before the ICC in 1931. ICC refused the increase, a three-judge court held its denial unlawful and remanded the matter to the Commission, ICC again refused the increase, a three-judge court again held the Commission's order unlawful, and on appeal the Supreme Court in 1938 held the courts to be without jurisdiction because the administrative action was a "negative order". At the same time, however, the Court indicated (1) that the Court of Claims might have jurisdiction to award money due but either refused under error of law or withheld by a confiscatory order and (2) that district courts had general jurisdiction of suits "arising under the postal laws" if the Commission acted in excess of authority or otherwise illegally. The carrier then resorted to the Court of Claims upon both constitutional and statutory grounds of error. That court, not assuming to exercise its jurisdiction as to the constitutional issue of confiscation, tried the matter and awarded a money judgment. Thus the Court of Claims had accorded a trial de novo, notwithstanding the general principle to the effect that —

in the absence of statute to the contrary—a reviewing court may "lay bare" legal errors but has no authority except to remand for further administrative action (see the *Pottsville* case, 309 U. S. 134, 84 L. Ed. 656). Indeed, the court had not only tried the matter de novo but had itself formulated the judgment as to the proper amount of compensation due the carrier for carrying mail. Such a course would have been clearly wrong under the three-judge court statute and procedure for review but, notwithstanding that the Supreme Court had meanwhile thrown overboard the negative order doctrine (*Rochester* case, 307 U. S. 125) which it had previously held barred review of the order here involved, the old doctrine had become the law of the case so that the instant carrier had no recourse under so-called Urgent Deficiencies Act procedure. It was plain, the Supreme Court felt, that the Court of Claims "substituted its own judgment for the Commission's concerning the relevance of facts to be taken into account in fixing a fair and reasonable rate" and "disregarded the Commission's informed contrary judgment in matters committed to its special competence". To permit such a course "not only would short-circuit the Commission in the rate-making process, but would involve substituting the court's judgment for the Commission's as to the amount of any new rate which might be fixed." In this dilemma the Supreme Court suggested district court review because those courts are not limited to rendering money judgments and, on discovering reversible errors of law, properly remand to administrative agencies for further proceedings there. "The relief afforded, unlike that required in the Court of Claims, could thus be limited to setting aside or enjoining the Commission's order and remanding the cause to it for further consideration, as is done in like cases reviewable by three-judge courts," said the Court, and "consistently with that jurisdiction also the review could be confined to the record made before the Commission rather than one compiled by independent evidence not presented to the Commission or considered by it." Section 10 of the Administrative Procedure Act was cited and quoted at length in support of this result. The decision is an excellent problem case for courses in administrative law.

Scope of review. The Court has applied the substantial evidence rule to an important class of cases in which it had been thought by some that a wider review was available. *Securities and Exchange Commission* v. *Central-Illinois S. Corp.*, 338 U. S. 96, 69 S. Ct. 1377, involved a petition by the Commission for approval of an amended reorganization plan filed under section 11(e) of the Public Utility Holding Company Act. There had been a conflict in the lower courts as to whether the court in such a proceeding had all the powers of an equity reorganization tribunal or whether it was bound by the Commission's findings if they had a rational basis in fact. The Supreme Court in the instant case resolves the conflict in favor of the latter view. This is so, says the Court, despite the fact that section 11(e), unlike section 24(a) of the Act, does not expressly limit the scope of review but may instead impliedly permit a broad review by characterizing the reviewing court as "a court of equity". The instant case, in effect, imports the substantial evidence rule into section 11(e) proceedings.

Ultra vires action. Agency action was set aside as *ultra vires* the enabling act in the following cases: *Federal Power Commission* v. *Panhandle Eastern Pipe Line,* 337 U. S. 498, 69 S. Ct. 1251 (FPC order prohibiting natural gas company from selling leases); *Hynes* v. *Grimes Packing Co.,* 337 U. S. 86, 69 S. Ct. 968 (Department of Interior regulations granting to occupants of Indian reservation exclusive commercial fishing rights); and *United States ex rel. Johnson* v. *Shaughnessy,* 336 U. S. 806, 69 S. Ct. 921 (alien exclusion order, where report of medical appeal board was not based on its medical re-examination of alien as required by Immigration Act).

Disbarment of practitioners. *Kingsland* v. *Dorsey,* 70 S. Ct. 123 (1949), dealt with the scope of the judicial review available over an order of the Patent Office disbarring petitioner from practice before it on grounds of gross misconduct. The Court of Appeals for the District of Columbia had asserted that in such a case the district court had full and original jurisdiction for a complete review, just as the Court of Appeals has always exercised in the matter of appeals from disbarment in the district court. The district court was consequently held to have restricted its scope of review too narrowly in holding that substantial evidence was sufficient to support the findings. On the merits the court held both that the agency findings were not adequately supported and that the proceedings before the Commissioner were unfair. 173 F. 2d 405. The Supreme Court reversed in a brief per curiam opinion, stating that the findings were amply supported, whether the "substantial evidence" test be applicable or not, and that the charge of unfairness in the hearings was without support.

PROCEDURE ACT CASES

The following paragraphs contain references to selected cases in the federal district and appeals courts through 175 F. 2d and 84 F. Supp. involving the Administrative Procedure Act. For Supreme Court cases, see the separate section of this Bulletin devoted to administrative law cases in the Supreme Court.

Definitions. *Willapoint Oysters* v. *Ewing,* 174 F. 2d 676, 692-694 (9th Cir. 1949), contains a useful discussion of the distinction between rule making and adjudication, which is fundamental to the operation of the APA. Orders of the Food and Drug Administration prescribing and establishing standards of identity and a standard of fill of containers for canned oysters are said to involve rule making within the meaning of section 2(c).

Hearing officers. In *Azzollini* v. *Watkins,* 172 F. 2d 897 (2d Cir. 1949), the court held that a deportation hearing did not have to be held before a hearing officer appointed under section 11 of the APA, but could be held before an immigrant inspector. Judge Frank stated that such inspector came within the saving clause of section 7(a) of the APA as an officer "specially provided for by or designated pursuant to statute", since he was mentioned in section 16 of the Immigration Act. Deportation proceedings may thus be held before an officer who has acted as both investigator and prosecutor, although in their nature such proceedings are the very essence at which

the independent examiner provisions of the APA were aimed. A view similar to that of the instant case has been taken in *United States* v. *Watkins,* 175 F. 2d 194 (2d Cir. 1949); *Wong Yang Sung* v. *Clark,* 174 F. 2d 158 (App. D. C. 1949); *Chow Kau* v. *Clark,* 83 F. Supp. 969 (D. C. 1949); *Yiakoumis* v. *Hall,* 83 F. Supp. 469 (E. D. Va. 1949). (In the latter case the court also said that the APA does not control deportation proceedings, because immigration is an exercise of a sovereign power in international relations and, as such, is exempted by the introductory clause of section 5 of APA.) It is questionable that these decisions represent a proper application of the saving clause of section 7(a). "The preservation of the 'conduct of specified classes of proceedings by or before boards or other officers specially provided by or designated pursuant to statute' is not a loophole for the avoidance of the examiner system; it is intended to preserve only special types of statutory hearing officers who contribute some special qualifications, as distinguished from examiners otherwise provided in the bill, and at the same time assure the parties fair and impartial procedure." House Committee Report, *APA Legislative History* 268 (1946).

Evidence. Hearsay is admissible under section 7(c). The requirement that the administrative findings accord with the substantial evidence does not forbid administrative utilization of probative hearsay in making such findings. *Willapoint Oysters* v. *Ewing,* 174 F. 2d 676, 690 (9th Cir. 1949).

Decision process. According to *Willapoint Oysters* v. *Ewing,* 174 F. 2d 676, 696 (9th Cir. 1949), section 8 does not affect the requirement of the first *Morgan* case, 298 U. S. 468, that the agency head (here the Federal Security Administrator) must himself make the actual decision. It does not, says the court, proscribe the assistance, expertise, and recommendations of his subordinates. Otherwise, his would be an impossible task.

Judicial review. The review provisions of the APA deal not with appellate court review but with review by an original action in a court of competent jurisdiction. Thus, the review action cannot be brought in the first instance in a United States Court of Appeals unless other statutes so provide. *City of Dallas* v. *Rentzel,* 172 F. 2d 122 (5th Cir. 1949).

The APA was held not applicable to a case involving matters which were committed by law to the discretion of the Atomic Energy Commission. *United Electrical, etc. Workers* v. *Lilienthal,* 84 F. Supp. 640 (D. C. 1949).

Complaint alleging illegal exclusion without hearing of an alien by the Attorney General, acting under war powers, did not state case for review under APA. *Van Laeken* v. *Wixon,* 84 F. Supp. 958 (N. D. Cal. 1949). For a similar holding, with no mention of the APA, see *United States ex rel. Knauff* v. *Watkins,* 173 F. 2d 599 (2d Cir. 1949).

The holding of *Inland Empire Dist. Council* v. *Millis,* 325 U. S. 697, that a district court may not enjoin an election directed by the NLRB, has been held not to be affected by section 10(a) in *International Union, Local No. 148* v. *International Union, Local No. 2,* 173 F. 2d 557 (8th Cir. 1949). Compare *Fay* v. *Douds,* 172 F. 2d 720 (2d Cir. 1949).

In *Valenti* v. *Clark,* 83 F. Supp. 167 (D. C. 1949), the court held that under section 10(b) of APA habeas corpus was the only proper mode of review in deportation cases. See similarly *Tung Shing* v. *Zimmerman,* 85 F. Supp. 270 (E. D. Pa. 1949). The holding is contrary to that in *United States ex rel. Trinler* v. *Carusi,* 166 F. 2d 457 (3d Cir. 1948, later abated for lack of timely substitution); *United States ex rel. Cammarata* v. *Miller,* 79 F. Supp. 643 (S. D. N. Y. 1948); and *Scholnick* v. *Clark,* 81 F. Supp. 298, 300 (D. C. 1948), and is of great practical importance to an alien against whom a deportation order is issued. Prior to the APA review could be obtained only by means of habeas corpus. Before the writ could be issued, it was necessary for the alien to be in the custody of the Attorney General. Under the APA it is at least arguable that the alien should be entitled to petition for review after the issuing of the deportation order, since such an order is "final" under section 10(c).

The Civil Aeronautics Board had granted a certificate of public convenience and necessity for certain air routes to intervenor and had denied the application of petitioner. This action of the Board was held improper on the ground that intervenor was not an applicant for the routes awarded and the Board could not award a certificate to one who was not an applicant for such routes. Petitioner also asked the court to reverse and remand with instructions to issue a certificate to it, asserting that the Board had already made the requisite findings which would entitle it to a certificate. But the court held that it lacked the power to order the issuance of a certificate which the Board had refused to issue. It declined to read section 10(e)(A) of APA, which states that the court shall "compel agency action unlawfully withheld", as requiring that result. *State Airlines* v. *Civil Aeronautics Board,* 174 F. 2d 510 (App. D. C. 1949).

According to Circuit Judge Bone, section 10(e) does not require the courts to go beyond the recognized limits under the substantial evidence rule. Insofar as the "whole record" requirement at the end of the section is concerned, "this was not intended to require reviewing courts to weigh the evidence and make independent findings of fact; rather it means that in determining whether agency action is supported by substantial evidence, the reviewing court should consider all the evidence in its measure as an integrated whole and not just the evidence favoring only one side." *Willapoint Oysters* v. *Ewing,* 174 F. 2d 676, 685, 689 (9th Cir. 1949).

FEDERAL HEARING EXAMINERS

There has been a great deal of mystery, after considerable furor in the press of the District of Columbia and among certain Senators, about the selection of hearing examiners by the U. S. Civil Service Commission pursuant to section 11 of the Administrative Procedure Act of 1946. Unfortunately the Commission has issued no explanatory statement of the situation, and the recent consultants to the Commission have thus far deemed it improper for them to release their final report independently. A subcommittee of the Senate Civil Service Committee has undertaken to look into the matter but has held no hearing nor issued any report. However, some of the pertinent facts may be ascertained orally and, because

of general interest in the subject, are summarized here.

Civil Service History

The Act contemplated that, one year after its adoption, the Civil Service Commission would have ready a system for examiner selection, tenure, and compensation. During that year it appointed an advisory committee of government personnel plus one outside representative. When on June 11, 1947, the crucial date arrived, the Commission adopted the expedient of covering in existing examiner personnel on a temporary basis pending further action.

The advisory committee recommended regulations which would in effect provide for the "covering in" of existing examiner personnel, intragovernment transfers of non-examiner personnel to examiner positions, and the compilation of a standard Civil Service list of eligibles for any vacancies or new positions which might technically become available. At that juncture considerable protest was heard from members of Congress and elsewhere, and there was a demand for open competition to fill all the examiner positions afresh. The Commission was further reminded of its unfortunate experience with the prior Board of Legal Examiners, for which Congress had cut off appropriations after charges of undue leniency and favoritism to existing personnel had been made.

Consultants Appointed

The Commission sought to avoid the dilemma by the appointment of a group of informed outsiders to advise it with respect to retention of individual incumbent examiners as well as the qualifications of non-examiner federal employees and outside applicants seeking the positions. Rules and standards were prescribed for the consultants. Certain prerequisite experience was to be required in addition to the necessary ability, aptitude, etc. The consultant group was composed of two state supreme court justices, two former presidents of the American Bar Association, a former Assistant Attorney General, and one member of the Commission's staff. These consultants advised with agency heads and specifically received the assurance of all but one of the latter that, in the case of any examiner who might ultimately be found not qualified by the Commission, some other position in the agency would be found for him.

First Results; Reconsideration

The Commission next selected a picked group of its investigators who made a thorough investigation and report on each incumbent examiner who desired to retain his position. After about a year of work, which included personal interviews with all incumbent examiners and other applicants for the positions, the group of consultants reported to the Commission. They suggested that more than two-thirds of the incumbent examiners be given permanent credentials immediately and that the remaining fifty or so be reconsidered by the consultant group. Similar recommendations were made respecting applicants who were not in examiner positions, although this group had first been screened by the Commission's own staff so that only about a third of such applicants had been submitted for the consideration of the consultants. The latter also recommended (1) a revision of the applicable rules to ameliorate the high standard which the Commission had prescribed originally and (2) that at least two more government

representatives be appointed to the consultant group. The Commission adopted the first suggestion informally but did not act on the second.

Charges and Complaints

At this juncture the Commission—instead of awaiting the reconsideration by the consultants under the modified instructions—immediately notified applicants (whether they were incumbents or outsiders) that they had been found not qualified and would be so treated in the absence of the usual Civil Service appeal procedure. After a month or so, during which the consultants were preparing to reconsider the cases where incumbents and applicants had not been found eligible on the first round, the still unpassed examiners in the Labor Board and perhaps others submitted charges of bias and prejudice against the consultants. An attack on the supposed inequities of the system was also widely publicized on behalf of Interstate Commerce Commission examiners who had not been certified as eligible on the first consultant screening. Civil Service Commissioner Arthur Flemming, who almost single-handedly set up the examiner system for the Commission, had resigned to become a college president and thus, internally, the examiner problem was left to the staff of the Civil Service Commission.

Resignation of Consultants

The consultants nevertheless proceeded to attempt to complete their work. Giving first attention to the incumbent examiners who had not been recommended for final credentials on the first screening, the consultants' total figures by July 25, 1949, were: 195 recommended for immediate final appointment as examiners, 18 passed to the Commission without any recommendation, and 5 still under consideration by the consultants. But still the Commission made no public reply to the charges of bias constantly publicized against the consultant group. Nor did it explain how the system was operating. The consultants also discovered at this point that (a) the Commission's staff treated even a favorable recommendation by the consultants as a "suggestion" which they were free to decline to accept and (b), in the case of numerous non-examiner applicants for the positions, the Commission or its staff was rerating cases even before final consultant disposition. The consultants thereupon refused to serve further and submitted a report, which the Commission has declined to release even—it is understood—to the Senate Civil Service Committee.

Subsequent Events

Subsequently the Commission has apparently undertaken a comprehensive consideration of all cases de novo, incumbents and outsiders alike, exclusively through its own channels and by its customary methods. There are reports that it has recently issued final appointment papers to practically all of the status examiners whom the consultants had passed to the Commission without recommendation. No list of eligibles seems yet to be available to agencies desiring to appoint new examiners. Also "war service" and other temporary incumbent examiners apparently must await the technical completion of such a register before their permanent status may be fixed.

The whole situation indicates that hopes for the establishment of a sound system of examiner selection, tenure, and compensation may not be measurably satisfied under current law and conditions. The Committee on

Examiners and Personnel of the Administrative Law Section will doubtless report in detail to the Section, particularly if and when the facts are officially released.

STATE DEVELOPMENTS

A detailed analysis of state administrative law, based upon a large number of questionnaires sent out by the National Conference of Judicial Councils, has just been published. The newest volume of the Judicial Administration Series, entitled *Minimum Standards of Judicial Administration,* is a survey of the extent to which the standards of the American Bar Association for improving the administration of justice throughout the country have been accepted. Edited by Arthur T. Vanderbilt, it contains a chapter on State administrative agencies and tribunals which presents some of the most significant facts regarding such administrative bodies, their organization, their activities of rule-making and adjudication, and the scope of judicial review of their determinations. Where relevant, comparisons are made with the recommendations of the Section on Judicial Administration of the American Bar Association and the appropriate sections of the Federal and Model State Administrative Procedure Acts. The main impression is that of the over-all deficiencies in state administrative law as compared with the federal field. Thus, to take one example, in the majority of states the situation with regard to the filing and publication of rules and regulations is still what it was in the federal field prior to the Federal Register Act of 1935.

Another document of interest to students of state administrative law is the *Second Biennial Report of the California Division of Administrative Procedure* which was presented to the Governor and Legislature on January 1, 1949. Included in the Report are a series of specific recommendations for amending the California Administrative Procedure Act and a valuable report on the procedure of the California Unemployment Insurance Appeals Board. Administrative law has advanced far in California as compared with most other states. Much of the credit for recent advances there must go to the Division of Administrative Procedure itself. Establishment of a similar investigating and reporting unit was recommended in both the Report of the Attorney General's Committee on Administrative Procedure (p. 123) and the Benjamin Report on Administrative Adjudication in New York (p. 18). The useful work of the California Division would seem to furnish practical evidence of the value of these recommendations.

OTHER FEDERAL CASES

For Supreme Court cases, as well as lower court cases on applications of the Administrative Procedure Act, see prior sections of this Bulletin. Other important federal court cases are the following:

Primary jurisdiction. Appellee brought action in the district court to enjoin appellant from operating as a scheduled air carrier engaged in air transportation in violation of section 401 of the Civil Aeronautics Act. Appellant had been issued a certificate of registration by the Civil Aeronautics Board as a non-certified, irregular air carrier. The district court issued a permanent injunction. The Court of Appeals reversed, holding that the court had no power to proceed since primary jurisdiction was vested

in the Board. After the assumption of control over an air carrier by the issuance of a certificate of registration, the Board has exclusive jurisdiction to determine all facts and questions in relation thereto before a private party, also subject to the control of the Board, may seek relief in court. *Trans-Pacific Airlines* v. *Hawaiian Airlines,* 174 F. 2d 63 (9th Cir. 1949). Compare *Michigan Consol. Gas Co.* v. *Panhandle Eastern Pipe Line Co.,* 173 F. 2d 784 (6th Cir. 1949).

Availability of review. *Washington* v. *Clark,* 84 F. Supp. 964 (D. C. 1949), is the first reported case involving the validity of Executive Order No. 9835 "Prescribing Procedures for the Administration of an Employees Loyalty Program in the Executive Branch of the Government." As far as the substance of the order is concerned, says Judge Holtzoff, the courts have no power to review the action of an Executive agency in separating one of its employees from the Government. A Government employee has no right to appeal from an order dismissing him from the service. Compare *Steiner* v. *Darby,* 199 P. 2d 1949 (Cal. 1949).

In *United States ex rel. Chu Leung* v. *Shaughnessy,* 83 F. Supp. 925 (S. D. N. Y. 1949), the court held that an administrative determination of citizenship in an exclusion proceeding was conclusive. Judge Kaufman held that he was bound by *United States ex rel. Madeiros* v. *Watkins,* 166 F. 2d 897 (2d Cir. 1948), although he indicated that he should have preferred to hold that the alien was entitled to a judicial determination on a trial de novo of his claim of citizenship. See, similarly, *Gan Seow Tung* v. *Clark,* 83 F. Supp. 482 (S. D. Cal. 1949). It is difficult to see why, in view of the fact that an alien is entitled to a judicial determination of the question of citizenship if the case is one involving deportation, a different rule should apply merely because the case involves exclusion. See *Perkins* v. *Elg,* 307 U. S. 325.

Scope of review. In *Federal Trade Commission* v. *Gratz,* 253 U. S. 421, the Court long ago held that the question of what constituted an unfair method of competition in a particular case was for the courts to determine as a matter of law. But subsequently the Court has tended to treat such questions as questions of fact for purposes of review. See for example *FTC* v. *Cement Institute,* 333 U. S. 683. This trend toward narrower review is not, however, followed uniformly by the lower federal courts. Thus, in *Tag Mfrs. Institute* v. *FTC,* 174 F. 2d 452 (1st Cir. 1949), a cease and desist order of the Commission was set aside on the ground that the practice prohibited was not an unfair method of competition in violation of the Act. The court went into the matter at great length and appeared to treat the question as one of law for purposes of review, thus following the example of the *Gratz* case.

Jurisdictional fact. In *Eschbach* v. *Brown,* 84 F. Supp. 825 (N. D. Ill. 1949), it was held that the doctrine of *Crowell* v. *Benson,* 285 U. S. 22, requires a trial de novo only where constitutional jurisdictional facts are in controversy, and does not have reference to statutory jurisdictional facts. With regard to the former type of jurisdictional facts, the *Crowell* case apparently still applies. See *Pittsburgh S. S. Co.* v. *Brown,* 171 F. 2d 175 (7th Cir. 1948). Insofar as other fact findings are concerned, even though jurisdiction under the statute depends upon them—for example, a finding that the injury was suffered in the course of

employment—the substantial evidence rule is applicable. *Southern Stevedoring Co.* v. *Henderson,* 175 F. 2d 863 (5th Cir. 1949); *Kwasizur* v. *Cardillo,* 175 F. 2d 235 (3d Cir. 1949); *Freeman S. S. Co.* v. *Pillsbury,* 172 F. 2d 321 (9th Cir. 1949).

Taft-Hartley Act. As stated by the House Conference Report, the language of sections 10(e) and (f) of the Taft-Hartley Act with respect to review of Labor Board findings of fact was intended "very materially [to] broaden the scope of the courts' reviewing power." "We are in no doubt," asserts Circuit Judge Hutcheson, "that the invoked provisions of the Labor Management Act were directed at these abuses of administrative expertise so-called, which the prevailing climate of Washington opinion, both Board and Court wise, has done so much to foster and encourage. Neither are we in any doubt that their total purpose has been, their effect will be, not only to proscribe bad, while prescribing good, practices for the Board, but to give the courts more latitude on review." *National Labor Relations Board* v. *Caroline Mills,* 167 F. 2d 212, 213 (5th Circ. 1948).

But manifest difficulties arise in any attempt to determine the exact extent and nature of the increased latitude of the reviewing court. One possible interpretation of the effect of the Taft-Hartley Act upon the scope of review is that applied in a case in the Seventh Circuit. "While there is no doubt," says Circuit Judge Kerner, "that it was the intention of Congress that the scope of the courts' reviewing power be broadened, there is a question of how far the test to be applied should go. Certainly there is to be no trial de novo and this quite definitely would seem to eliminate the doctrine of weighing the evidence. We are impelled to the conclusion that, in effect, the scope of our review under the new Act is only immaterially changed from the scope of our review under the National Labor Relations Act." *NLRB* v. *Austin Co.,* 165 F. 2d 592, 595 (7th Cir. 1948); cf. *Victor Mfg. Co.* v. *NLRB,* 174 F. 2d 867, 868 (7th Cir. 1949).

If the result of the 1947 Act upon the scope of review is as stated by Judge Kerner, what purpose was served by the change in language from the original Wagner Act? Circuit Judge Martin has recently sought to answer this question. "In the matter of factual review", he states, "the Taft-Hartley Act * * * merely broadened the Wagner Act * * * to the extent that the findings of fact of the National Labor Relations Board must now be based upon substantial evidence rather than upon evidence unqualified by the adjective 'substantial'; and that determination of issues of fact must be reached upon consideration of the record as a whole." *NLRB* v. *Tappan Stove Co.,* 174 F. 2d 1007, 1008 (6th Cir. 1949). Unless the Taft-Hartley Act changes the narrow interpretation of the substantial evidence rule taken in *NLRB* v. *Waterman S. S. Co.* (309 U. S. 206) by requiring the reviewing court to consider the whole record, it merely restates existing law. Compare *NLRB* v. *Crompton-Highland Mills,* 337 U. S. 217, 69 S. Ct. 960. The suggested change in the addition of the word "substantial" adds little, for ever since the *Consolidated Edison* case (305 U. S. 197) the requirement of "evidence" in the Wagner Act has been construed as meaning "substantial evidence."

Personal liability. *Gibson* v. *Reynolds,* 172 F. 2d 95 (8th Cir. 1949), involved an action for damages against a local Draft

Board and state selective service officials for alleged improper classification of appellant. The court held that such an action could not be maintained, since selective service officials came within the class of officers who are afforded personal imunity from civil actions for damages in relation to matters committed to them by law although probable cause be absent and malice be present in their enforcement of the law. The *Gibson* case was followed in *Dodez* v. *Weygandt*, 173 F. 2d 965 (6th Cir. 1949), where the court stated that selective service officials were quasi-judicial officers clothed with the immunity of judicial officers from damage suits of the present character. Compare *Kendrick* v. *United States*, 82 F. Supp. 430 (N. D. Ala. 1949), and *Bell* v. *Hood*, 327 U. S. 678.

LITERATURE

Law and the Executive in Britain by Bernard Schwartz. New York University Press. Pp. x, 388. $5.50. This is a comparative study of English administrative law, with emphasis upon developments since the Report of the Committee on Ministers' Powers. The study is presented from the American point of view and in making comparisons, a good portion of the book is devoted to a discussion of the relevant American cases and statutes. As stated by the author: "The experience of a kindred people who hold the same basic doctrines that we do, should be helpful in our evaluation of developments on this side of the Atlantic." The book contains a detailed analysis of the rule-making and judicial powers of administrative agencies, legislative controls, judicial review, and the war power. See also *Administrative Procedure in Britain*, Schwartz, B., 27 Canadian B. Rev. 382, April 1949, which is also a comparative study of basic procedural problems. The author advocates the adoption of a hearing examiner system such as that set up under the Federal Administrative Procedure Act to meet certain defects of the British system.

Administrative Determinations and Personal Rights in the Present Supreme Court. Fuchs, R. F., 24 Ind. L. J. 163, Winter 1949. Although it is a commonplace that the present Court is on the whole far more deferential to administrative determinations than the "old Court", its deference is not so apparent in cases involving personal rights. Where personal freedoms seem threatened as a result of administrative action, the Court manifests readiness to extend judicial safeguards to them.

Administrative Determinations as State Law under Erie v. Tompkins. Rosenfield, H., 24 N. Y. U. L. Q. Rev. 319, April 1949. This article discusses the problem whether federal courts, in ascertaining state law, are bound by determinations of state administrative authorities on the construction and meaning of state law. It concludes that administrative determinations come under the *Erie* doctrine and are entitled to the same degree and extent of consideration in federal courts in this respect as are state judicial determinations.

Administrative Finality and the Administrative Procedure Act. Schwartz, B., 37 Georgetown L. J. 526, May 1949; 17 I. C. C. Prac. J. 32, Oct. 1949. This article treats of the effect of section 10 of the APA upon the availability of judicial review. The author believes Congress did more than codify existing law. Specifically, deportation orders are seen to be reviewable di-

rectly and cases involving public grants or benefits are now said to be reviewable on the same basis as are those involving other kinds of administrative action.

Administrative Findings or the Ameer in America. Jaffe, L. L., 34 Corn. L. Q. 473, Summer 1949. Here emphasis is placed upon the crucial importance of findings and a growing judicial insistence upon adequate findings. Effective judicial control is said to be impossible unless the administrator explains the theory of his action. The article contains a penetrating discussion of several important litigations.

Administrative Law. Glasser, A., 4 Rutgers L. Rev. 54, September 1949. A survey of developments in New Jersey during 1948-49.

Administrative Law and Codification of Statutes. McFarland, C., David Dudley Field Centenary Essays (N. Y. U. Law School 1949) 204 and 10 Mont. L. Rev. 1, Spring 1949. This address deals with the codification concept and the extent to which it has affected administrative law. Included is some discussion of the need for codification, administrative law in the original Field Codes, and recent state and federal legislation on administrative law.

Administrative Procedure and the A. P. A. Schwartz, B., 24 N. Y. U. L. Q. Rev. 514, July 1949. This is an analysis of the procedural provisions of the APA. The article, like the Act, follows the distinction between rule making and adjudications. The author apprehends that the safeguards intended by section 4 of the APA can prove to be illusory in particular cases and feels section 5(c) does not deal with the heart of the concentration of functions problem. The applicability of section 5 is discussed in some detail.

An Administrative Procedure Act for New York. Schwartz, B., 24 N. Y. U. L. Q. Rev. 55, January 1949. Legislation modeled upon the Federal and Model State Administrative Procedure Acts is advocated for New York. The article deals with the problems involved, with special reference to deficiencies in existing procedures.

Direct Judicial Review of Administrative Action under Section 10(c) of the Administrative Procedure Act. 62 Harv. L. Rev. 1216, May 1949. What actions of a federal agency will be given immediate review by a court? This is a discussion of the effect of section 10(c) of the APA upon the question.

Federal Administrative Management and the Administrative Procedure Act. Blachley, F. F., and Oatman, M. E., 24 Notre Dame Law, Spring 1949. It is the purpose of this paper to show that the federal agencies engaged in administrative economic management, as well as the courts, will be impeded in their work by the APA. Especially criticized are the formal rule-making procedures prescribed by the last sentence of section 4(b) and the enlarged scope of review provided by section 10.

Interstate Commerce Commission — Some Comments on Practice and Procedure before the Commission. McFarland, W., 16 I. C. C. Prac. J. 537, March 1949. This is a discussion of procedural problems, with emphasis upon the effect of the Administrative Procedure Act. The author maintains that there is nothing in the APA specifically requiring any changes in the Commission's Rules of Practice. There is also some examination of the effect of the APA upon the law of judicial review.

Judicial Control of Administrative Action by Means of the Extraordinary Remedies in Minnesota. Riesenfeld, S., Bauman, J. A., and Maxwell, R. C., 33 Minn. L. Rev. 569, 685, May and June 1949. This is an exhaustive investigation of the present status with reference to the availability and scope of judicial review by means of the extraordinary remedies in Minnesota, with a view to exposing possible shortcomings of the system and determining what remedial measures are needed. The first installment deals with mandamus, the second with certiorari.

Official Notice. Davis, K. C., 62 Harv. L. Rev. 537, February 1949. The thesis of this paper is that the limitations of the traditional doctrine of judicial notice are largely irrelevant to the work of regulatory agencies. The author contends that the only limit on official notice should be the requirement of a fair hearing, and that the cardinal principle of a fair hearing is neither that all facts should be in the record nor that all facts should be subject to cross examination and rebuttal evidence, but rather that parties should have opportunity to meet in the appropriate fashion any materials that influence decision.

Practice Before Federal Administrative Agencies—Some Practical Aspects. 16 I. C. C. Prac. J. 734, May 1949. This paper presents a valuable discussion by the Chairman of the Civil Aeronautics Board.

Safeguards in Delegated Legislation. Fitzgerald, R. C., 27 Canadian Bar Rev. 550, May, 1949. This is a presentation of the English practice and its relevancy to Canada. Much of the material is of value to the American student as well.

Standing to Challenge and to Enforce Administrative Action. Davis, K. C., 49 Col. L. Rev. 759, June 1949. This article examines the constitutional and common-law background and various statutory provisions governing standing to challenge or to enforce action of the important federal regulatory agencies. The author contends that the Administrative Procedure Act, instead of solving or simplifying, seems to aggravate the pre-existing problems.

The Administrative Procedure Act and Judicial Review of Agency Actions. 37 Georgetown L. J. 569, May 1949. The effect of section 10(e) of the APA upon the scope of review is the subject of this commentary. Decisions thus far are said to indicate that the scope of review has not been broadened, although there has been a moderate expansion in the power of the courts to review agency action.

The Impact of the Federal Administrative Procedure Act on Deportation Proceedings. 49 Col. L. Rev. 73, January 1949. Deportation proceedings are said to be subject to the judicial review provisions of the APA and to the adjudication portions with the exception of sections 7(a) and 11 dealing with presiding officers and their appointment.

The Non-Judicial Judge. Carr, C., 65 L. Q. Rev. 188, April 1949. This article comments on the Administrative Procedure Act from an English point of view.

The Scope of Judicial Review. Ames, H. C., 16 I. C. C. Prac. J. 286, January 1949. In this discussion of the extent to which findings of fact by administrative agencies are open to review by the courts, special emphasis is placed upon the effect of the Administrative Procedure Act. The legal

profession is seen to be benefited by two decided changes in the philosophy of decision and review—(a) a duty on the part of the administrative agency to show with greater particularity the underlying fact findings and the statutory provisions upon which it relies and (b) a duty on the part of the reviewing court to see to it that the decision follows those precepts even if the review entails an independent examination of the facts.

The State Executive Branch in New State Constitutions. 9 Pub. Admin. Rev. 11, Winter 1949. This is a study of the constitutions of New Jersey and Missouri from the point of view of the improvements obtained in the administrative process.

SECTION COMMITTEES

The period from September to January in each Section year is given over to program planning and committee appointments. This year that function has required extraordinary effort and care because of the now substantial Section membership and the establishment of ten or twelve additional Section committees. On the other hand the Chairman has been aided greatly in making appointments by the response of more than 250 of the members to his request that they indicate the committee or committees on which they would be willing to serve this year. The number of these responses was sufficient to insure that each committee will be adequately manned with an able and interested personnel.

To facilitate the formulation of the Section's program for the year and work out the respective committee activities, the Chairman has announced a meeting of all the Section's officers, councilmen, and committee chairmen and vice-chairmen to be held in Washington, D. C., on January 12. From the responses of those urged to attend it is expected that at least one representative of each committee will be present. A report of the meeting and a summary of its results will appear in the next issue of the *Bulletin.*

The first name appearing under each of the following committees is that of committee chaiman; other names are those of vice-chairmen. The latter are usually assigned to a particular agency within the subject group covered by the committee.

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